

ETHICS ADVISORY 98-16 -- Special Edition (Widely Attended Gatherings)

The Army Standards of Conduct Office prepared an article on when and under what circumstances employees may accept free attendance at an event. **General Wilson read this article and directed that it be passed "to all senior folks in the command."** I am doing that in this "Special Edition" ETHICS ADVISORY. Everyone should have a familiarity with the issue.

The Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch and DOD Joint Ethics Regulation, DOD 5500.7-R, generally prohibit Executive Branch employees from accepting any gift offered by a prohibited source or because of the employee's official position. However, OGE has established several exceptions to this general prohibition, where gifts may be accepted without undermining government integrity. One of these is attendance at a "widely attended gathering."

Attendance in Your Personal Capacity

The Office of Government Ethics has identified "widely attended gatherings" as events in which the Army has interest, but which are not necessarily official. Acceptance of free attendance at a widely attended gathering is a personal gift, but a gift which may be accepted because it offers an opportunity to represent the Army's interests or share information on matters of mutual interest. Typically, the event will be a conference or a seminar, but it could also be a social event, such as a cocktail party. The consistent feature of these events is that they are of sufficient size and diversity to promote the Army's interests.

If an event is "widely attended," an employee may be authorized to accept free attendance at all or part of the event. To qualify as widely attended, the event (or the relevant portion of the event) must either be open to interested parties from throughout a given industry or profession, or be attended by a number of persons with diverse views or interests. For example, a gathering with a large number of employees of a particular defense contractor, where some Government employees are invited, is not sufficiently diverse. Similarly, a small gathering of 12 individuals with diverse interests is not sufficiently large. Typically, an event must have at least 20 or more individuals attending to qualify under this exception. The determining factor is whether the event will give the employee an opportunity to exchange views or information with a sufficient number of people who represent a variety of views or interests.

There is an additional requirement that applies when someone other than the sponsor of the event bears the cost of the employee's attendance. In that case, the employee may only accept free attendance if either of the following is true:

- (1) The sponsor (not the person bearing the cost) decides who to invite; or
- (2) More than 100 persons are expected to attend the event, and the value of free attendance (including the employee's spouse's attendance, if applicable) does not exceed \$250.

This rule often comes into play when a DOD contractor asks the sponsor of an event to invite certain DOD officials and pays for their attendance. This rule is designed to prevent special interests from buying access to DOD employees. To avoid accepting an offer that violates this rule, employees need to know who is really inviting them, as well as who is paying for their attendance.

Before accepting free attendance at an event under this exception, the employee must always obtain approval from his supervisor. This approval may be verbal or written, but must include a determination that the employee's attendance at the event is in the Army's interest because it will further Army programs or operations. Such interests may include promoting community relations or providing the opportunity to exchange views or technical information with members of a specific profession. If the person or organization that invited the employee to attend has interests that could be affected by the performance of the employee's official duties, the supervisor must make a further written finding that the agency's interest in the employee's attendance outweighs the appearance of improper influence. Supervisors should make this finding in coordination with their Ethics Counselor. The supervisor may also authorize acceptance of free attendance for an accompanying spouse or guest if others in attendance will generally be accompanied, and if the offer to the spouse or guest is from the same source as the offer to the employee.

In some cases, supervisors may issue a blanket determination that attendance by all or a specific category of employees and their guests is in the Army's interest. This determination does not, however, eliminate the need for the written finding described above for those employees whose duties could affect the donor's interests. When a blanket determination of interest in an event has been made, supervisors should nevertheless review requests to accept free attendance to ensure that no conflicts of interest exist and to ensure there is value in having that specific employee attend.

This exception does not apply to travel or lodging expenses, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees. In fact, the employee must personally pay for or provide his own transportation to and from the event. It does allow acceptance of conference materials, and meals and entertainment that are integral to the event. Gifts accepted under this exception are personal gifts. When spouses are customarily included in an event, the cost of their participation may also be accepted. Employees who file financial disclosure

reports must report the gift on that report if the total value of all gifts (including any gift of free attendance for an accompanying spouse) from the donor is \$250 or more.

Attendance in Your Official Capacity

An Army employee who is assigned to speak, participate on a panel, or to otherwise present information on behalf of the Army in an official capacity may accept free attendance at the conference or other event where the activity will take place, provided the gift is extended by the sponsor of the event. This exception recognizes that free attendance is necessary to performance of the employee's duties, and, therefore, is not a gift to the employee.

This exception is limited to free attendance at the event on the day of the employee's presentation. The employee may accept waiver of the conference or other fee for attendance, as well as certain items (food, refreshments, entertainment, instruction, and materials) furnished to all attendees as an integral part of the event. The employee may not accept, under this exception, travel or lodging expenses or items such as food and entertainment that are collateral to the event. (There is separate statutory authority for acceptance of offers to pay official travel expenses for employees and accompanying spouses. Consult with your Ethics Counselor on the rules governing such an offer. **[See ETHICS ADVISORY 98-01 -- Gifts of Travel and Related Expenses for Official Travel])**

When on official Army business, the employee may be reimbursed from appropriated funds for meals and other travel-related expenses necessary to the employee's temporary duty assignment; however, the employee must generally use personal time and funds to participate in any collateral entertainment, such as golf tournaments, associated with the event. Such events will rarely justify the use of appropriated funds or meet the requirements of the widely attended gathering exception. Employees who are offered free attendance at entertainment events should always seek their Ethics Counselor's advice before accepting the offer.

If you have any questions, please consult with me (617-8003), Alex Bailey (617-8004), or Stan Citron (617-8043).

Mike Wentink
Associate Counsel/Ethics Counselor
Office of Command Counsel, Room 7E18